ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA- HQ-OAR-2005-0538; FRL-]

Protection of Stratospheric Ozone: The 2007 Critical Use Exemption from the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing an exemption to the phaseout of methyl bromide to meet the needs of 2007 critical uses. Specifically, EPA is proposing uses that will qualify for the 2007 critical use exemption and the amount of methyl bromide that may be produced, imported, or supplied from stocks for those uses in 2007. EPA is taking action under the authority of the Clean Air Act to reflect recent consensus Decisions taken by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) at the 17th Meeting of the Parties (MOP). EPA is seeking comment on the list of critical uses and on EPA's determination of the amounts of methyl bromide needed to satisfy those uses.

DATES: Comments must be submitted by **[Insert date 30 days after date of publication]**. Any party requesting a public hearing must notify the contact person listed below by 5 p.m. Eastern Standard Time on **[Insert date 5 days after date of publication]**. If a hearing is requested it will be held on **[Insert date 15 days after date of publication]** and comments will be due to the Agency **[Insert date 45 days after publication]**. EPA will post information regarding a hearing, if one is requested, on the Ozone Protection website www.epa.gov/ozone. Persons interested in attending a public

hearing should consult with the contact person below regarding the location and time of the hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA- HQ-OAR-2005-0538**, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.
- Email: A-and-R-docket@epa.gov
- Fax: 202-343-2337, attn: Hodayah Finman
- Mail: **Air Docket, Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460**.
- Hand Delivery or Courier. Deliver your comments to: EPA Air Docket, EPA West, 1301 Constitution Avenue, NW, Room B108, Mail Code 6102T, Washington, D.C. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-HQ-OAR-2005-0538**. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact

information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Hodayah Finman by telephone at (202) 343-9246, or by e-mail at mebr.allocation@epa.gov or by mail at Hodayah Finman, U.S. Environmental Protection

Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. You may also visit the Ozone Depletion web site of EPA's Stratospheric Protection Division at www.epa.gov/ozone for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and other related topics.

SUPPLEMENTARY INFORMATION:

This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a class I, Group VI controlled substance) for critical uses during calendar year 2007. Under the Clean Air Act, methyl bromide consumption (consumption is defined under the CAA as production plus imports minus exports) and production was phased out on January 1, 2005 apart from allowable exemptions, namely the critical use exemption and the quarantine and pre-shipment exemption. With this action, EPA is proposing and seeking comment on the uses that will qualify for the 2007 critical use exemption as well as specific amounts of methyl bromide that may be produced, imported, or made available from stocks for proposed critical uses in 2007.

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I. General Information

A. Regulated Entities

Entities potentially regulated by this proposed action are those associated with the production, import, export, sale, application, and use of methyl bromide covered by an approved critical use exemption. Potentially regulated categories and entities include:

Category	Examples of Regulated Entities
Industry	Producers, Importers and Exporters of methyl bromide; Applicators, Distributors of methyl bromide; Users of methyl bromide, e.g., farmers of vegetable crops, fruits and seedlings; and owners of stored food commodities and structures such as grain mills and processors, agricultural researchers.

The above table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is aware could potentially be regulated by this proposed action. To determine whether your facility, company, business, or organization is regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR Part 82, Subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider When Preparing My Comments?

1. *Confidential Business Information*. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you

claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or

personal threats.

- Make sure to submit your comments by the comment period deadline identified.

II. What is the Background to the Phaseout Regulations for Ozone-Depleting Substances?

The current regulatory requirements of the Stratospheric Ozone Protection Program that limit production and consumption of ozone-depleting substances can be found at 40 CFR Part 82, Subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol). The Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone depleting substances. The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990) which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued new regulations to implement this legislation and has made several amendments to the regulations since that time.

III. What is Methyl Bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a class I ozone-depleting substance (ODS). Methyl bromide is used in the U.S. and throughout the world as a

fumigant to control a wide variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Additional characteristics and details about the uses of methyl bromide can be found in the proposed rule on the phaseout schedule for methyl bromide published in the **Federal Register** on March 18, 1993 (58 FR 15014) and the final rule published in the **Federal Register** on December 10, 1993 (58 FR 65018).

The phaseout schedule for methyl bromide production and consumption was revised in a direct final rulemaking on November 28, 2000 (65 FR 70795), which allowed for the phased reduction in methyl bromide consumption and extended the phaseout to 2005. The revised phaseout schedule was again amended to allow for an exemption for quarantine and preshipment purposes on July 19, 2001 (66 FR 37751) with an interim final rule and with a final rule on January 2, 2003 (68 FR 238). Information on methyl bromide can be found at http://www.epa.gov/ozone/mbr and http://www.unep.org/ozone or by contacting the Stratospheric Ozone Hotline at 1-800-296-1996.

Because it is a pesticide, methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Because of this status, a restricted use pesticide is subject to certain Federal and State requirements governing its sale, distribution, and use. Nothing in this proposed rule implementing the Clean Air Act is intended to derogate from provisions in any other Federal, State, or Local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. All entities that would be affected by provisions of this proposal must continue to comply with FIFRA and other pertinent

statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide for critical uses. The regulations in this proposed action are intended only to implement the CAA restrictions on the production, consumption and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. What is the Legal Authority for Exempting the Production and Import of Methyl Bromide for Critical Uses Authorized by the Parties to the Montreal Protocol?

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen amendment to the Protocol. The Parties authorize critical use exemptions through their Decisions.

The Parties agreed that each industrialized country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze in the level of methyl bromide production and consumption for industrialized countries. EPA published a final rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a class I, Group VI controlled substance, freezing U.S. production and consumption at this 1991 level, and, in Section 82.7 of the rule, setting forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until the year 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a class I substance and phase out its production and consumption.

This date was consistent with section 602(d) of the CAAA of 1990, which for newly listed class I ozone-depleting substances provides that "no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances." EPA based its action on scientific assessments and actions by the Parties to the Montreal Protocol to freeze the level of methyl bromide production and consumption for industrialized countries at the 1992 Meeting of the Parties in Copenhagen.

At their 1995 meeting, the Parties made adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for industrialized countries with exemptions permitted for critical uses. At that time, the U.S. continued to have a 2001 phaseout date in accordance with the CAAA of 1990 language. At their 1997 meeting, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in industrialized countries, with reduction steps leading to a 2005 phaseout for industrialized countries. In October 1998, the U.S. Congress amended the CAA to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to bring the U.S. phaseout of methyl bromide in line with the schedule specified under the Protocol, and to authorize EPA to provide exemptions for critical uses. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105-277, October 21, 1998) and were codified in Section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at Section 604(d)(6), 42 U.S.C. 7671c(d)(6). On November 28, 2000, EPA issued

regulations to amend the phaseout schedule for methyl bromide and extend the complete phaseout of production and consumption to 2005 (65 FR 70795).

On December 23, 2004 (69 FR 76982), EPA published a final rule (the "Framework Rule") in the **Federal Register** that established the framework for the critical use exemption; set forth a list of approved critical uses for 2005; and specified the amount of methyl bromide that could be supplied in 2005 from available stocks and new production or import to meet the needs of approved critical uses. EPA then published a second final rule that added additional uses to the exemption program for 2005 and allocated additional stock allowances (70 FR 73604). EPA published a final rule on February 6, 2006 to exempt production and import of methyl bromide for 2006 critical uses and indicate which uses met the criteria for the exemption program for that year (71 FR 5985). Under authority of section 604(d)(6) of the CAA, EPA is proposing the uses that will qualify as approved critical uses in 2007 and the amount of methyl bromide required to satisfy those uses.

This proposed action reflects Decision XVII/9, taken at the Parties' Seventeenth Meeting in December 2005. In accordance with Article 2H(5), the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of proposed critical uses. The December 23, 2004 Framework Rule (69 FR 76984) discusses the relationship between the relevant provisions of the CAA and Article 2H of the Protocol, and the Decisions of the Parties that interpret Article 2H. Briefly, EPA regards certain provisions of Decisions IX/6, Ex I/4, and XVII/9 as subsequent consensus agreements of the Parties that address the interpretation and application of the critical use provision in Article 2H(5) of the

Protocol. This proposed action follows the terms of these provisions to ensure consistency with the Montreal Protocol and satisfy the requirements of sections 604(d)(6) and 614(b) of the Clean Air Act.

V. What is the Critical Use Exemption Process?

A. Background of the Process

Starting in 2002, EPA began notifying applicants of the process for obtaining a critical use exemption to the methyl bromide phaseout. On May 8, 2003, the Agency published its first notice in the **Federal Register** (68 FR 24737) announcing the availability of the application for a critical use exemption and the deadline for submission of the requisite data. Applicants were informed that they may apply as individuals or as part of a group of users (a "consortium") who face the same limiting critical conditions (i.e. specific conditions that establish a critical need for methyl bromide). EPA has repeated this process annually since then. The critical use exemption is designed to permit production and import of methyl bromide for uses that do not have technically and economically feasible alternatives.

The criteria for the exemption are delineated in Decision IX/6 of the Parties to the Protocol. In that Decision, the Parties agreed that "a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) there are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and public health and are suitable to the crops and circumstances of the

nomination." These criteria are reflected in EPA's definition of "critical use" at 40 CFR 82.3.

In response to the yearly requests for critical use exemption applications published in the **Federal Register**, applicants have provided data on the technical and economical feasibility of using alternatives to methyl bromide. Applicants further submit data on their use of methyl bromide, on research programs into the use of alternatives to methyl bromide, and on efforts to minimize use and emissions of methyl bromide.

EPA's Office of Pesticide Programs reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide and whether there would be significant market disruption if no exemption were available. In addition, EPA reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. This assessment process culminates with the development of a document referred to as the "Critical Use Nomination" or CUN. The CUN is submitted annually by the U.S. Department of State to the United Nations Environment Programme (UNEP)'s Ozone Secretariat. The CUNs of various countries are subsequently reviewed by the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP), which are independent advisory bodies to Parties to the Montreal Protocol. These bodies make recommendations to the Parties on the nominations. The Parties then take a Decision to authorize a critical use exemption for a particular country. The Decision also identifies how much methyl bromide may be supplied for the exempted critical uses. Finally, for each exemption period, EPA

provides an opportunity such as this for comment on the amounts of methyl bromide that the Agency has determined to be necessary for critical uses and the uses that the Agency has determined meet the criteria of the critical use exemption.

For more information on the domestic review process and methodology employed by the Office of Pesticide Programs, please refer to a detailed memo titled "Development of 2003 *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America*" available on the docket for this rulemaking. While the particulars of the data continue to evolve and clerical matters are further streamlined, the technical review itself has remained the same since the inception of the exemption of the program.

On January 31, 2005, the U.S. Government submitted the third *U.S. Nomination for a Critical Use Exemption for Methyl Bromide* to the Ozone Secretariat of the United Nations Environment Programme. This third nomination contained the request for 2007 critical uses. On March 16 and 18, 2005, and June 10 and 13, 2005, MBTOC sent questions to the U.S. Government concerning technical and economic issues in the nomination. The U.S. Government transmitted responses to these requests for clarification on April 8, 2005 and August 18, 2005. These documents, together with reports by the advisory bodies noted above, can be accessed in the docket for this rulemaking. The determination in this proposed rule reflects the analysis contained in those documents.

B. How Does This Proposed Rulemaking Relate to Previous Critical Use Exemption Rulemakings?

The December 23, 2004 Framework Rule (69 FR 76982) established the bulk of the framework for the critical use exemption in the U.S. including trading provisions and

recordkeeping and reporting obligations. In this action, EPA is not proposing to change the framework of the exemption program but rather to establish a list of approved critical uses for 2007 and issue allowances that will determine the amount of methyl bromide available for those uses consistent with the Framework Rule.

C. Proposed Critical Uses and Adjustments to Critical Use Amounts

In Decision XVII/9, taken in December 2005, the Parties to the Protocol agreed as follows: "for the agreed critical-use categories for 2007, set forth in table C to the annex to the present decision for each Party, to permit, subject to the conditions set forth in the present decision and decision Ex.I/4, the levels of production and consumption for 2007 set forth in table D of the annex to the present decision which are necessary to satisfy critical uses …"

The following uses are those set forth in table C of the annex to Decision XVII/9: cucurbits; dry commodities/structures cocoa beans; dried fruit and nuts; NPMA dry commodities/structures (processed foods, herbs & spices, dried milk and cheese processing facilities); dry cure pork products (building and product); eggplant (field); forest nursery seedlings; mills and processors; nursery stock- fruit trees, raspberries, roses; orchard replant; ornamentals; peppers (field); strawberry fruit (field); strawberry runners; tomato (field) and turf grass. When added together, the agreed critical-use levels for 2007 total 6,749,060 kilograms, which is equivalent to 26.4% of the U.S. 1991 methyl bromide consumption baseline of 25,528,000 kilograms. However, the maximum amount of allowable new production or import as set forth in table D of Decision XVII/9 is 5,149,060 kgs, which is equivalent to 20% of the 1991 methyl bromide consumption baseline. The difference between allowable new production or import and total critical

use exemption will be made up from available stocks. EPA further discusses the breakout between new production or import and stocks in sections V.G. and V.H. of this preamble.

EPA is proposing to make the following reductions to the amount of newly produced or imported methyl bromide authorized in Decision XVII/9 to satisfy critical uses:

a) reductions to accommodate uptake of sulfuryl fluoride in 2007
b) reductions to account for unused critical use methyl bromide at the end of 2005
c) reductions equivalent to the amount authorized for research purposes
d) reductions to accommodate increased allocation of critical stock allowances (CSAs)

In the 2006 CUE Rule (71 FR 5985), EPA allocated less methyl bromide for critical uses than was authorized by the Parties, in order to account for the recent registration of sulfuryl fluoride. The Agency based those reductions on the data contained in the 2008 Critical Use Nomination (CUN), which was submitted to the Ozone Secretariat in January 2006. The 2008 CUN is available in the docket for this proposed rule. The nomination indicated that sulfuryl fluoride is registered to control the relevant pests in all post-harvest sectors except for cheese and dry cured ham use categories and that between 12 percent and 18 percent of the industry, depending on the use category, could feasibly transition to this alternative each year. This analysis still represents the best available data on the transition to sulfuryl fluoride including factors such as potential obstacles in the export of treated commodities. The report of the Methyl Bromide Technical Options Committee (MBTOC) indicated that the MBTOC did not

make any reductions in these use categories for the uptake of sulfuryl fluoride in 2007 because the United States Government indicated that it would do so in its domestic allocation procedures. Therefore, EPA is proposing to reduce the total volume of critical use methyl bromide by 68,170 kilograms to reflect the continuing transition to sulfuryl fluoride. The Agency seeks comment on the transition rates for sulfuryl fluoride described in the 2008 CUN and used in this proposed rule. In particular, the Agency continues to seek comment on the ability of certain end users, such as dried fruit and nut processors, to be able to use sulfuryl fluoride given the progress made by importing countries in establishing and approving tolerance levels for the use of sulfuryl fluoride. A copy of the 2008 analysis is available in the rulemaking docket for comment.

As described in the December 23, 2004 Framework Rule (69 FR 76997), EPA is not permitting entities to build stocks of methyl bromide produced or imported under the critical use exemption program. To prevent the unintended build up of such stocks, the Agency indicated that any volumes of methyl bromide produced or imported under the critical use exemption in a calendar year, but not used in that year, must be reported to EPA the following year. These reporting requirements appear at §§82.13(f)(3)(xvi), 82.13(g)(4)(xviii), and 82.13(bb)(2)(iii). An amount equivalent to this "carry-over," whether pre-plant or post-harvest, would then be deducted from the total level of allowable new production and import in the year following the year of the data report. For example, all carry-over methyl bromide that was produced or imported under the critical use exemption in 2005 was reported to EPA in 2006 and would be reduced from the total allowable levels of new production/import in 2007. Therefore, in this proposed rule, EPA is proposing to reduce the total level of new production and import for critical

uses by 443,000 kilograms to reflect the total level of carry-over material available at the end of 2005. As described in the Framework Rule, after applying this reduction to the total volumes of allowable new production or import, EPA is pro-rating critical use allowances (CUAs) to each company based on their 1991 baseline market share.

Decision XVII/9, paragraph 7, "request[s] Parties to endeavor to use stocks, where available, to meet any demand for methyl bromide for the purposes of research and development." In response to this Decision, EPA is reducing the total supply of new production and import for critical uses by an amount equivalent to the total amount authorized for research purposes, which is 21,702 kilograms. The calculations used by the Agency for the research adjustment are available for public comment in the docket for this action. Further, EPA is encouraging methyl bromide suppliers to sell stocks to researchers and is encouraging researchers to purchase stocks of methyl bromide.

Lastly, the Agency is considering increasing the amount of critical stock allowances (CSAs) to allocate for 2007 critical uses from 6.2% of baseline as specified in Decision XVII/9 to 7.5% of baseline consistent with the amount allocated for 2005 critical uses. In section V.H. of this preamble, the Agency describes the rationale for proposing and seeking comment on two different amounts of CSAs to allocate. In allocating additional CSAs, the Agency must make a corresponding reduction in the amount of new production and import under the exemption program. In this proposed action, EPA will list two tables of CUA and CSA allocations reflecting both the lower and upper CSA scenarios.

On February 6, 2006, EPA amended the label for 1,3-dichloropropene (1,3-D) regarding karst restrictions and copies of the amended labels are available in the docket

for this proposed rule . The previous label states “Do not apply in areas overlying karst geology” whereas the new label states “Do not apply this product within 100 feet of karst topographical features.” The new label language is more instructive on the use of 1,3-D in areas with karst topography, while still protecting the environment, than the previous label language. EPA’s assessment of the amount of methyl bromide that may be displaced by the use of 1,3-D over karst areas in the 2007 technical analysis is already based on the revised label language now in place. Therefore, EPA is not proposing to make further reductions to the volumes of pre-plant methyl bromide based on the label change. EPA refers commenters to the more detailed explanation of this matter in the responses to the MBTOC available in the docket for this rulemaking. A copy of the label amendment is available in the docket as well.

In this proposed rule, EPA is proposing to modify Columns B and C of Appendix L to 40 CFR Part 82, Subpart A to reflect the agreed critical-use categories identified in Decision XVII/9 for the 2007 control period (calendar year). The Agency is proposing to amend the table of critical uses based, in part, on the technical analysis contained in the 2007 U.S. nomination that assesses data submitted by applicants to the critical use exemption program as well as public and proprietary data on the use of methyl bromide and its alternatives. EPA is seeking comment on the aforementioned analysis and, in particular, any information regarding changes to the registration or use of alternatives that may have transpired after the 2007 U.S. nomination was written. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA’s determination as to which uses and what amounts of methyl bromide qualify for the critical use exemption. EPA notes

that while we may, in response to comments, reduce the proposed quantities of critical use methyl bromide, or decide not to approve uses authorized by the Parties, we do not intend to increase the quantities or add new uses in the final rule beyond those authorized by the Parties. Therefore, if there has been a change in registration of an alternative that results in that alternative no longer being available to a particular use, EPA does not intend to add uses or amounts of methyl bromide to the critical use exemption program beyond those identified here. Under such circumstances, the user should apply to EPA, requesting that the U.S. nominate its use for a critical use exemption in the future. Based on the information described above, EPA is proposing that the uses in Table I: Approved Critical Uses, with the limiting critical conditions specified, qualify to obtain and use critical use methyl bromide in 2007.

Table I: Approved Critical Uses

Column A	Column B	Column C
Approved Critical Uses	**Approved Critical User and Location of Use**	**Limiting Critical Conditions** that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne fungal disease infestation Moderate to severe disease infestation A need for methyl bromide for research purposes
	(b) Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia	Moderate to severe yellow or purple nutsedge infestation Moderate to severe fungal disease infestation Moderate to severe root knot nematodes A need for methyl bromide for research purposes
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe fungal disease infestation Moderate to severe root knot nematodes A need for methyl bromide for research purposes
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Moderate to severe disease infestation Restrictions on alternatives due to karst geology A need for methyl bromide for research purposes

	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Moderate to severe pythium root, collar, crown and root rot Moderate to severe disease infestation Moderate to severe southern blight infestation Restrictions on alternatives due to karst geology A need for methyl bromide for research purposes
	(c) Michigan growers	Moderate to severe soilborne fungal disease infestation A need for methyl bromide for research purposes
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin	Moderate to severe weed infestation including purple and yellow nutsedge infestation Moderate to severe Canada thistle infestation Moderate to severe nematodes Moderate to severe fungal disease infestation
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation Moderate to severe nematodes and worms
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington	Moderate to severe yellow nutsedge infestation Moderate to severe fungal disease infestation
	(f) Michigan growers	Moderate to severe disease infestation Moderate to severe Canada thistle infestation Moderate to severe nutsedge infestation Moderate to severe nematodes
	(g) Michigan herbaceous perennials growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Moderate to severe yellow nutsedge and other weed infestation
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's Raspberries and their contract growers in California and Washington)	Moderate to severe nematode infestation Presence of medium to heavy clay soils Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes

	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers	Moderate to severe nematode infestation Presence of medium to heavy clay soils Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes
	(c) California rose nurseries	Moderate to severe nematode infestation Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes
Strawberry Nurseries	(a) California growers	Moderate to severe disease infestation Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes A need for methyl bromide for research purposes
	(b) Maryland, North Carolina, and Tennessee growers	Moderate to severe black root rot Moderate to severe root-knot nematodes Moderate to severe yellow and purple nutsedge infestation A need for methyl bromide for research purposes
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Presence of medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes
	(b) California table and raisin grape growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(c) California wine grape growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes

	(d) California walnut growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(e) California almond growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
Ornamentals	(a) California growers	Moderate to severe disease infestation Moderate to severe nematodes Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(b) Florida growers	Moderate to severe weed infestation Moderate to severe disease infestation Moderate to severe nematodes Karst topography A need for methyl bromide for research purposes
Peppers	(a) California growers	Moderate to severe disease infestation Moderate to severe nematodes Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Moderate to severe pythium root, collar, crown and root rots Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less A need for methyl bromide for research purposes
	(c) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation Moderate to severe nematodes Karst topography A need for methyl bromide for research purposes
	(d) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes, or moderate to severe pythium root and collar rots Moderate to severe southern blight infestation, crown or root rot A need for methyl bromide for research purposes
	(e) Michigan growers	Moderate to severe fungal disease infestation A need for methyl bromide for research purposes

Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached Time to transition to an alternative A need for methyl bromide for research purposes
	(b) Florida growers	Moderate to severe yellow or purple nutsedge Moderate to severe nematodes Moderate to severe disease infestation Carolina geranium or cut-leaf evening primrose infestation Karst topography and to a lesser extent a need for methyl bromide for research purposes
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers	Moderate to severe yellow or purple nutsedge Moderate to severe nematodes Moderate to severe black root and crown rot Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less A need for methyl bromide for research purposes
Tomatoes	(a) Michigan growers	Moderate to severe disease infestation Moderate to severe fungal pathogen infestation A need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation Moderate to severe nematodes Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less Karst topography A need for methyl bromide for research purposes
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI)	Production of industry certified pure sod Moderate to severe bermudagrass Moderate to severe nutsedge Moderate to severe white grub infestation Control of off-type perennial grass infestation A need for methyl bromide for research purposes
POST-HARVEST USES		
Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe infestation of beetles, weevils or moths Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (For this proposed rule, "pet food" refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative

	(c) Kraft Foods in the U.S.	Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs and spices, dried milk and cheese processing facilities)	Moderate to severe beetle or moth infestation Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives A need for methyl bromide for research purposes
Dry Cured Pork Products	(a) Members of the National Country Ham Association	Moderate to severe red legged ham beetle infestation Moderate to severe cheese/ham skipper infestation Moderate to severe dermested beetle infestation Ham mite infestation
	(b) Members of the American Association of Meat Processors	Moderate to severe red legged ham beetle infestation Moderate to severe cheese/ham skipper infestation Moderate to severe dermested beetle infestation Ham mite infestation
	(c) Nahunta Pork Center (North Carolina)	Moderate to severe red legged ham beetle infestation Moderate to severe cheese/ham skipper infestation Moderate to severe dermested beetle infestation Ham mite infestation

In the December 23, 2004 Framework Rule, EPA restricted access to stocks for approved critical users as a condition of obtaining new production and import (69 FR 76987). Decision XVII/9 establishes two distinct caps on the supply of methyl bromide for critical uses: a limit on the maximum allowable level of production or import and a limit on the maximum allowable amount of methyl bromide to be used for critical uses. It further indicates that the difference between the two levels is to be made up "by using quantities of methyl bromide from stocks that the Party has recognized to be available."

EPA continues to view promulgated restrictions on the use of stocks by critical uses (69 FR 76987) as an appropriate means of ensuring that total critical use does not exceed the level agreed to by the Parties. The Agency also believes that the restriction on access to stocks for critical uses is an expression of the United States' "renewed commitment" to take stocks into account as expressed in Decision XVII/9(5).

EPA is proposing to amend the table in 40 CFR part 82, subpart A, Appendix L, as reflected above. Specifically, EPA is adding one and deleting seven references to and from column B. The changes are as follows: adding cheese processing facilities to NPMA dry commodities to reflect the authorization of this use in Decision XVII/9; removing Idaho, Kansas, Nebraska, Oregon, Utah, and Washington from the approved public nursery locations in the Forest Nursery Sector because a 2007 application for these locations was not submitted to EPA; and removing California growers from the tomato sector because this use was not authorized by the Parties for 2007.

The categories listed in Table I above have been designated critical uses for 2007 in Decision XVII/9 of the Parties. The amount of methyl bromide approved for research purposes is included in the amount of methyl bromide approved by the Parties for the commodities for which "research" is indicated as a limiting critical condition in the table above. However, consistent with the approach taken in the 2006 CUE Rule, the Agency is not setting aside a specific quantity of methyl bromide to be associated with research activities. Methyl bromide is needed for research purposes including experiments that require methyl bromide as a standard control treatment with which to compare the trial alternatives' results. EPA is proposing that the following sectors be allowed to use critical use methyl bromide for research purposes: cucurbits, dried fruit and nuts, nursery

stock, strawberry nurseries, turfgrass, eggplant, peppers, strawberry fruit, tomatoes, and orchard replant. In their applications to EPA, these sectors identified research programs that require the use of methyl bromide.

D. The Criteria in Decisions IX/6 and Ex. I/4

Paragraphs 2 and 5 of Decision XVII/9 request parties to ensure that the conditions or criteria listed in Decisions Ex. I/4 and IX/6, paragraph 1, are applied to exempted critical uses for the 2007 control period. A discussion of the Agency's application of the criteria in paragraph 1 of Decision IX/6 appears in sections V.A. and V.C. of this preamble. In section V.C., the Agency is soliciting comments from the public on the technical basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption. The CUNs detail how each proposed critical use meets the criteria listed in paragraph 1 of Decision IX/6, apart from the criterion located at (b)(ii), as well as the criteria in paragraphs 5 and 6 of Decision Ex. I/4.

The criterion in Decision IX/6(1)(b)(ii), which refers to the use of available stocks of methyl bromide, is addressed in sections V.G. and V.H. of this preamble. The Agency has previously provided its interpretation of the criterion in Decision IX/6(1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption, and EPA refers readers to the 2006 CUE final rule (71 FR 5989) as well as to the memo on the docket on the CUE process for further elaboration.

The remaining considerations, including the lack of available technically and economically feasible alternatives under the circumstance of the nomination, efforts to minimize use and emissions of methyl bromide where technically and economically

feasible, the development of research and transition plans, and the requests in Decision Ex. I/4(5) that Parties consider and implement MBTOC recommendations, where feasible, on reductions in the critical use of methyl bromide and in paragraph 6 for Parties that submit critical use nominations to include information on the methodology they use to determine economic feasibility are all addressed in the nomination documents.

Some of these criteria are evaluated in other documents as well. For example, the U.S. has further considered matters regarding the adoption of alternatives and research into methyl bromide alternatives, criterion (1)(b)(iii) in Decision IX/6, in the development of the National Management Strategy (NMS) submitted to the Ozone Secretariat in December 2005 and in on-going consultations with industry. The NMS addresses all of the aims specified in Decision Ex.I/4(3) to the extent feasible and is available in the docket for this rulemaking.

E. Emissions Minimization

EPA notes for the regulated community the reference to emission minimization techniques in paragraph 6 of Decision XVII/9, which states that Parties shall request critical users to employ "emission minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible." In addition, EPA understands that research is being conducted on the potential to reduce rates and emissions using newly available high-barrier films and that these studies show promising results. Users of methyl bromide should make every effort to decrease overall emissions of methyl bromide by implementing measures such as the ones listed above, to the extent consistent with state and local laws and regulations. The Agency encourages

researchers and users who are successfully utilizing such techniques to inform EPA of their experiences as part of their comments on this proposed rule and to provide such information with their critical use applications. In addition, the Agency welcomes comments on the implementation of emission minimization techniques and whether and how further emission minimization could be achieved.

F. Critical Use Allowance Allocations

EPA is proposing to allow limited amounts of new production or import of methyl bromide for critical uses for 2007 up to the amount of 4,616,188 kilograms (18.08% of baseline) or in the alternative 4,301,588 kilograms (16.85% of baseline) as shown in Tables IIa and IIb respectively below, depending on the volume of critical stocks the Agency allocates. In section V.C. of this preamble, the Agency indicated that if we allocate a larger amount from stocks, EPA would make a corresponding reduction to the volume of allowable new production/import. EPA is seeking comment on the total levels of exempted new production or import for pre-plant and post-harvest critical uses in 2007. Each critical use allowance (CUA) is equivalent to 1 kg of critical use methyl bromide. These allowances expire at the end of the control period and, as explained in the Framework Rule, are not bankable from one year to the next. This proposal for allocating the following number of pre-plant and post-harvest CUAs to the entities listed below is subject to the trading provisions at 40 CFR 82.12, which are discussed in section V.G. of the preamble to the Framework Rule (69 FR 76982).

Table IIa: Proposed Allocation of Critical Use Allowances based on 1,621,702 kg from stocks

Company	**2007 Critical use allowances for pre-plant uses* (kilograms)**	**2007 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp.	2,573,764	231,494
Albemarle Corp.	1,058,390	95,196
Ameribrom, Inc.	584,889	52,607
TriCal, Inc.	18,212	1,638
Total	*4,235,254*	*380,935*

Table IIb: Proposed Allocation of Critical Use Allowances based on 1,936,302 kgs from stocks

Company	**2007 Critical use allowances for pre-plant uses* (kilograms)**	**2007 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp.	2,401,699	212,376
Albemarle Corp.	987,633	87,334
Ameribrom, Inc.	545,787	48,262
TriCal, Inc.	16,994	1,503
Total	*3,952,114*	*349,475*

* For production or import of class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in Appendix L to 40 CFR Part 82.

Paragraph four of Decision XVII/9 states "that Parties shall endeavor to license, permit, authorize, or allocate quantities of critical use methyl bromide as listed in tables A and C of the annex to the present decision." This is similar to language in Decisions Ex. I/3(4) and Ex. II/1(4) regarding 2005 and 2006 critical uses, respectively. The language from these Decisions calls on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

In establishing the critical use exemption program, the Agency endeavored to allocate directly on a sector-by-sector basis by analyzing and proposing this option among others in the August 2004 Framework Rule notice (69 FR 52366). EPA solicited comment on both universal and sector-based allocation of critical use allowances. The Agency evaluated the various options based on their economic, environmental and practical effects. After receiving comments, EPA determined in the final Framework Rule (69 FR 76989) that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-specific approach would pose significant administrative and practical difficulties. Although the approach adopted in the Framework Rule does not directly allocate allowances to each category of use, the Agency anticipates that reliance on market mechanisms will achieve similar results indirectly. The TEAP recommendations are based on data submitted by the U.S. which in turn are based on recent historic use data in the current methyl bromide market. In other words, the TEAP recommendations agreed to by the Parties are based on current use and the current use patterns take place in a market where all pre-plant and post-harvest methyl bromide uses compete for a lump sum supply of critical use material. Therefore, the Agency believes that under a system of universal allocations, divided into pre-plant and post-harvest sectors, the actual critical use will closely follow the sector breakout listed by the TEAP. These issues were addressed in the previous rule and EPA is not aware of any factors that would alter the analysis performed during the development of the Framework Rule. EPA is not proposing to change the approach adopted in the Framework Rule for the allocation of CUAs but, in an endeavor to address

Decision XVII/9(4), EPA will consider additional comment on the Agency's allocation of CUAs in the two groupings (pre-plant and post-harvest) that the Agency has employed in the past. A summary of the options analysis conducted by EPA is available in the docket for this rulemaking.

G. Critical Stock Allowance Allocations and Total Volumes of Critical Use Methyl Bromide

EPA is proposing to allocate critical stock allowances (CSAs) to the entities listed below in Table III for the control period of 2007 in the range of between 1,621,702 kilograms (6.2% of US 1991 baseline) and 1,936,302 kilograms (7.5% of US 1991 baseline). EPA is employing the same methodology and baselines for allocating CSAs as in previous critical use rulemakings (69 FR 76982). If the Agency allocates 1,621,702 kg of CSAs, then it would also allocate 4,616,188 kg of allowances for new production/import, bringing the total volume of critical use methyl bromide to 6,237,890 kg (24.4% of baseline) for 2007 US critical uses. If the Agency allocates 1,936,302 kg of CSAs, then it would also allocate 4,301,588 kg of allowances for new production/import, bringing the total volume of critical use methyl bromide to 6,237,890 kgs (24.4% of baseline) for 2007 US critical uses as well. The Agency is seeking comment on the amount of critical use methyl bromide to come from stocks.

EPA currently possesses information on existing stocks of methyl bromide that has been claimed as confidential. With regard to data for 2003, EPA has determined that the aggregate stock information is not confidential business information but, in accordance with EPA regulations, is withholding that information due to the filing of complaints by affected businesses seeking to enjoin the Agency from its release (40 CFR

2.205). The United States District Court for the District of Columbia recently ruled that EPA has properly withheld the aggregate information in this circumstance. In addition, the court upheld EPA's treatment of the company-specific information as confidential. NRDC v. Leavitt, 2006 WL 667327 (D.D.C. March 14, 2006). Therefore, the documentation regarding company-specific allocation of CSAs is in the confidential portion of the rulemaking docket and is not listed in the table below. EPA will inform the listed companies of their CSA allocations in a letter following publication of the final rule. EPA continues to follow its own regulations with respect to the treatment of information claimed as confidential.

Table III: Allocation of Critical Stock Allowances

Company	
Albemarle	Industrial Fumigation Company
Ameribrom, Inc.	J.C. Ehrlich Co.
Bill Clark Pest Control, Inc.	Pacific Ag
Blair Soil Fumigation	Pest Fog Sales Corp.
Burnside Services, Inc.	Prosource One
Cardinal Professional Products	Reddick Fumigants
Carolina Eastern, Inc.	Royster-Clark, Inc.
Degesch America, Inc.	Southern State Cooperative, Inc.
Dodson Bros.	Trical Inc.
Great Lakes Chemical Corp.	Trident Agricultural Products
Harvey Fertilizer & Gas	UAP Southeast (NC)
Helena Chemical Co.	UAP Southeast (SC)
Hendrix & Dail	Univar
Hy Yield Bromine	Vanguard Fumigation Co.
	Western Fumigation
TOTAL – 1,621,702 kilograms or 1,936,302 kilograms	

Several companies that receive very small amounts of CSAs from EPA have contacted the Agency and requested that they be permitted to permanently retire their allowances. Some companies receive as few as 3 allowances which allow the holder to sell up to 3 kilograms of methyl bromide to critical uses. Due to the small allocation and because they typically do not sell critical use methyl bromide, they find the allocation of CSAs, and associated record-keeping and reporting requirements, to be unduly burdensome. In response to this concern, EPA is proposing to allow CSA holders, on a voluntary basis, to permanently relinquish their allowances through written notification to the person indicated in the "addresses" section of this preamble during the comment period for this rulemaking. Such companies would not receive CSA allocations and would be excluded from future allocations. All allowances forfeited by companies through the written notification process will be reallocated to the remaining companies on a pro-rata basis.

H. Stocks of Methyl Bromide

As discussed above and in the December 23, 2004 Framework Rule, an approved critical user may obtain access to exempted production/import of methyl bromide and to limited inventories of pre-phaseout methyl bromide, the combination of which constitute the supply of "critical use methyl bromide" intended to meet the needs of agreed critical uses.

In developing this proposed action, the Agency notes that Decision XVII/9 (para. 5) contains the following language: "that each Party which has an agreed critical use renews its commitment to ensure that the criteria in paragraph 1 of decision IX/6 are applied when licensing, permitting or authorizing critical use of methyl bromide and that

such procedures take into account available stocks of banked or recycled methyl bromide." This language is similar to language in Decision XVI/2 authorizing 2006 critical uses. Language calling on Parties to address stocks also appears in Decision Ex. I/3, which authorized 2005 critical uses.

In the Framework Rule, which established the architecture of the critical use exemption program and set out the exempted levels of critical use for 2005, EPA interpreted paragraph 5 of Decision Ex. I/3 "as meaning that the U.S. should not authorize critical use exemptions without including provisions addressing drawdown from stocks for critical uses" (69 FR 76987). The Framework Rule established provisions governing the sale of pre-phaseout inventories for critical uses, including the concept of CSAs and a prohibition on sale of pre-phaseout inventories for critical uses in excess of the amount of CSAs held by the seller. In addition, EPA noted that stocks were further taken into account through the trading provisions that allow critical use allowances to be converted into CSAs. Under this proposed action, no significant changes would be made to those provisions.

In the February 6, 2006 final rule that determined the amount to come from stocks during the 2006 control period, EPA stated that "bearing in mind the United States' 'renewed commitment' as stated in Decision Ex II/1, and its experience with the 2005 critical use nomination," EPA would exercise its discretion to reduce production/import and authorize and additional amount from inventory (71 FR 5998). For the 2006 control period, EPA authorized 1,136,008 kilograms (5% of baseline) to be supplied from pre-phaseout methyl bromide inventories. EPA noted that "continued drawdown of inventory for critical uses at the level authorized in the Framework Rule for 2005" (i.e., 5% of

baseline) was an appropriate means, for the 2006 control period, "of continuing the commitment previously made, in light of our understanding of current inventory and our analysis of the current needs of users." In addition, EPA responded to stakeholder concerns that taking 5% of baseline from inventory in 2006 and 6.2% in 2007 would result in shortages. EPA reported that the Agency "has re-examined the available inventory data and has projected multiple scenarios concerning levels of consumption of existing inventory. Based on these efforts, EPA believes that critical users will continue to be able to meet their needs throughout 2006 and 2007 through the anticipated combination of new production and import and inventory drawdown" (71 FR 6000).

After EPA published the 2006 final rule, it collected data on holdings of pre-2005 stocks from methyl bromide suppliers as part of its routine reporting under the CUE program. For 2007, EPA is proposing that the amount to come from stocks be either the difference between the agreed U.S. critical-use level (6,749,060 kg) and the amount of allowable new production or import (5,149,060 kg) (the difference between these amounts is 1,600,000 kg, or 6.2% of baseline) or 1,914,600 kgs (7.5% of baseline) as it was for critical uses in 2005, plus an additional amount for the adjustment for amounts for research purposes. Both amounts are larger than the amounts taken from stocks in the preceding year of the exemption program and represent the continued regulatory implementation of U.S. commitments expressed in relevant Decisions of the Parties including Decision XVII/9(5). EPA is also seeking comment on whether some other number in this range would be appropriate.

In light of the possibility that EPA will authorize a lower amount of production/import than allowed in Decision XVII/9 and therefore that the regulated

community may have concerns regarding shortages of methyl bromide, the Agency would like to reiterate its commitment to closely monitor CUA and CSA data. Further, as stated in the final 2006 CUE rule, if an inventory shortage occurs, EPA may consider various options including, but not limited to, promulgating a final version of the petition process proposed on October 27, 2005 (70 FR 62030), taking into account comments received on that proposal; proposing a different administrative mechanism to serve the same purpose; or authorizing conversion of a limited number of CSAs to CUAs through a rulemaking, bearing in mind the upper limit on U.S. production/import for critical uses.

An alternative means of addressing stocks appeared in a recent **Federal Register** notice relating to the essential use exemption program (71 FR 18264). In that context, the relevant Decision stated that "Parties shall take into account . . . stocks of controlled substances . . . such that no more than a one-year operational supply is maintained by that manufacturer." This Decision refers to another exemption program, one that is analogous but differently structured from the CUE, and operating for different applications and circumstances. EPA seeks comment on whether, in the critical use exemption context, it would be appropriate to adjust the level of new production and import with the goal of maintaining a stockpile of some specified duration and seeks comment on how many months of inventory of methyl bromide may be appropriate to maintain non-disruptive management of this chemical in the supply chain for purposes of determining availability as inventories are reduced over time.

In sections V.F. and V.G. of this preamble, EPA seeks comment on the amount of critical use methyl bromide to come from stocks compared to new production and import.

VI. Statutory and Executive Order Reviews

A. Executive Order No. 12866: Regulatory Planning and Review

Under Executive Order No. 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this is a “significant regulatory action” under Executive Order No. 12866 and EPA has submitted it to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This proposed action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations, 40 CFR Part 82, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has

assigned OMB control number 2060-0564, EPA ICR number 2179.02 and 2179.03. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 566-1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) a small business that is identified by the North American Industry Classification System (NAICS) Code in the Table below; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less that 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Category	NAICS code	SIC code	NAICS Small business size standard (in number of employees or millions of dollars)

Agricultural production	1112- Vegetable and Melon farming 1113- Fruit and Nut Tree Farming 1114- Greenhouse, Nursery, and Floriculture Production	0171- Berry Crops 0172- Grapes 0173- Tree Nuts 0175- Deciduous Tree Fruits (except apple orchards and farms) 0179- Fruit and Tree Nuts, NEC 0181- Ornamental Floriculture and Nursery Products 0831- Forest Nurseries and Gathering of Forest Products	$0.75 million
Storage Uses	115114- Postharvest Crop activities (except Cotton Ginning) 311211- Flour Milling 311212- Rice Milling 493110- General Warehousing and Storage 493130- Farm Product Warehousing and Storage	2041- Flour and Other Grain Mill Products 2044- Rice Milling 4221- Farm Product Warehousing and Storage 4225- General Warehousing and Storage	$6 million $21.5 million
Distributors and Applicators	115112- Soil Preparation, Planting and Cultivating	0721- Crop Planting, Cultivation, and Protection	$6 million
Producers and Importers	325320- Pesticide and Other Agricultural Chemical Manufacturing	2879- Pesticides and Agricultural Chemicals, NEC	500 employees

Agricultural producers of minor crops and entities that store agricultural commodities are categories of affected entities that contain small entities. This proposed rule will only affect entities that applied to EPA for a de-regulatory exemption. In most cases, EPA received aggregated requests for exemptions from industry consortia. On the exemption application, EPA asked consortia to describe the number and size distribution of entities their application covered. EPA estimated that 3,218 entities petitioned EPA for an exemption for the 2005 control period. EPA received requests from a comparable number of entities for the 2006 control period. Since many applicants did not provide information on the distribution of sizes of entities covered in their applications, EPA estimated that, based on the above definition, between one-fourth and one-third of the entities may be small businesses. In addition, other categories of affected entities do not contain small businesses based on the above description.

After considering the economic impacts of this proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." (5 U.S.C. §§ 603-604). Thus, an Agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves a regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule exempts methyl bromide for approved critical uses after the phaseout date

of January 1, 2005, this is a de-regulatory action which will confer a benefit to users of methyl bromide. EPA believes the estimated de-regulatory value for users of methyl bromide is between $20 million and $30 million annually. We have therefore concluded that this proposed rule will relieve regulatory burden for all small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a written statement is required under Section 202, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, unless the Agency explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Section 203 of the UMRA requires the Agency to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule. Section 204 of the UMRA requires the Agency to develop a process to allow elected state, local, and tribal government officials to provide input in the development of any proposal containing a significant Federal intergovernmental mandate.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This action is deregulatory and does not impose any new requirements on any entities. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Further, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order No. 13132: Federalism

Executive Order No. 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The phrase "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order No. 13132. This proposed rule is expected to primarily affect producers, suppliers, importers and exporters and users of methyl bromide. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order No. 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order No. 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order No. 13175. This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. The proposed rule does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order No. 13175 does not apply to this proposed rule.

G. Executive Order No. 13045: Protection of Children from Environmental Health and Safety Risks

Executive Order No. 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5-501 of the Order has the potential to influence the regulation. This proposed

rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order No. 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a "significant energy action" as defined in Executive Order No. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use. Therefore, we have concluded that this proposed rule is not likely to have any adverse energy effects.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law. No. 104-113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 82

Environmental protection, Ozone depletion, Chemicals, Exports, Imports.

Dated: _____

_____

Stephen L. Johnson, Administrator.

For the reasons stated in the preamble, 40 CFR Part 82 is proposed to be amended as follows:

PART 82- PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

2. Section 82.8 is amended by revising the table in paragraph (c)(1) and paragraph (c)(2) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	**2007 Critical use allowances for pre-plant uses* (kilograms)**	**2007 Critical use allowances for post-harvest uses* (kilograms)**
Great Lakes Chemical Corp.	2,573,764	231,494
Albemarle Corp.	1,058,390	95,196
Ameribrom, Inc.	584,889	52,607
TriCal, Inc.	18,212	1,638
Total	*4,235,254*	*380,935*

* For production or import of class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

(2) Allocated critical stock allowances granted for specified control period. The following companies are allocated critical stock allowances for 2007 on a pro-rata basis in relation to the inventory held by each.

Company	
Albemarle	Industrial Fumigation Company

Ameribrom, Inc.	J.C. Ehrlich Co.
Bill Clark Pest Control, Inc.	Pacific Ag
Blair Soil Fumigation	Pest Fog Sales Corp.
Burnside Services, Inc.	Prosource One
Cardinal Professional Products	Reddick Fumigants
Carolina Eastern, Inc.	Royster-Clark, Inc.
Degesch America, Inc.	Southern State Cooperative, Inc.
Dodson Bros.	Trical Inc.
Great Lakes Chemical Corp.	Trident Agricultural Products
Harvey Fertilizer & Gas	UAP Southeast (NC)
Helena Chemical Co.	UAP Southeast (SC)
Hendrix & Dail	Univar
Hy Yield Bromine	Vanguard Fumigation Co.
	Western Fumigation
TOTAL – 1,621,702 kilograms	

3. Appendix L to Subpart A is revised to read as follows:

APPENDIX L TO PART 82 SUBPART A – APPROVED CRITICAL USES AND LIMITING CRITICAL CONDITIONS FOR THOSE USES FOR THE 2007 CONTROL PERIOD

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User and Location of Use	Limiting Critical Conditions that either exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation:
PRE-PLANT USES		
Cucurbits	(a) Michigan growers	Moderate to severe soilborne fungal disease infestation Moderate to severe disease infestation A need for methyl bromide for research purposes

	(b) Southeastern U.S. limited to growing locations in Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia	Moderate to severe yellow or purple nutsedge infestation Moderate to severe fungal disease infestation Moderate to severe root knot nematodes A need for methyl bromide for research purposes
	(c) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe fungal disease infestation Moderate to severe root knot nematodes A need for methyl bromide for research purposes
Eggplant	(a) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Moderate to severe disease infestation Restrictions on alternatives due to karst geology A need for methyl bromide for research purposes
	(b) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Moderate to severe pythium root, collar, crown and root rot Moderate to severe disease infestation Moderate to severe southern blight infestation Restrictions on alternatives due to karst geology A need for methyl bromide for research purposes
	(c) Michigan growers	Moderate to severe soilborne fungal disease infestation A need for methyl bromide for research purposes
Forest Nursery Seedlings	(a) Growers in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, and Virginia	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation
	(b) International Paper and its subsidiaries limited to growing locations in Alabama, Arkansas, Georgia, South Carolina, and Texas	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation
	(c) Public (government-owned) seedling nurseries in Illinois, Indiana, Kentucky, Maryland, Missouri, New Jersey, Ohio, Pennsylvania, West Virginia, and Wisconsin	Moderate to severe weed infestation including purple and yellow nutsedge infestation Moderate to severe Canada thistle infestation Moderate to severe nematodes Moderate to severe fungal disease infestation
	(d) Weyerhaeuser Company and its subsidiaries limited to growing locations in Alabama, Arkansas, North Carolina, and South Carolina	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation Moderate to severe nematodes and worms
	(e) Weyerhaeuser Company and its subsidiaries limited to growing locations in Oregon and Washington	Moderate to severe yellow nutsedge infestation Moderate to severe fungal disease infestation

	(f) Michigan growers	Moderate to severe disease infestation Moderate to severe Canada thistle infestation Moderate to severe nutsedge infestation Moderate to severe nematodes
	(g) Michigan herbaceous perennials growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Moderate to severe yellow nutsedge and other weed infestation
Orchard Nursery Seedlings	(a) Members of the Western Raspberry Nursery Consortium limited to growing locations in California and Washington (Driscoll's Raspberries and their contract growers in California and Washington)	Moderate to severe nematode infestation Presence of medium to heavy clay soils Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes
	(b) Members of the California Association of Nurserymen-Deciduous Fruit and Nut Tree Growers	Moderate to severe nematode infestation Presence of medium to heavy clay soils Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes
	(c) California rose nurseries	Moderate to severe nematode infestation Prohibition on use of 1,3-dichloropropene products because local township limits on use of this alternative have been reached A need for methyl bromide for research purposes
Strawberry Nurseries	(a) California growers	Moderate to severe disease infestation Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes A need for methyl bromide for research purposes
	(b) Maryland, North Carolina, and Tennessee growers	Moderate to severe black root rot Moderate to severe root-knot nematodes Moderate to severe yellow and purple nutsedge infestation A need for methyl bromide for research purposes
Orchard Replant	(a) California stone fruit growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Presence of medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(b) California table and raisin grape growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes

	(c) California wine grape growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(d) California walnut growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(e) California almond growers	Moderate to severe nematodes Moderate to severe fungal disease infestation Replanted (non-virgin) orchard soils to prevent orchard replant disease Medium to heavy soils Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
Ornamentals	(a) California growers	Moderate to severe disease infestation Moderate to severe nematodes Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(b) Florida growers	Moderate to severe weed infestation Moderate to severe disease infestation Moderate to severe nematodes Karst topography A need for methyl bromide for research purposes
Peppers	(a) California growers	Moderate to severe disease infestation Moderate to severe nematodes A prohibition on the use of 1,3-dichloropropene products because local township limits for this alternative have been reached A need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Moderate to severe pythium root, collar, crown and root rots Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less A need for methyl bromide for research purposes

	(c) Florida growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation Moderate to severe nematodes Karst topography A need for methyl bromide for research purposes
	(d) Georgia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes, or moderate to severe pythium root and collar rots Moderate to severe southern blight infestation, crown or root rot A need for methyl bromide for research purposes
	(e) Michigan growers	Moderate to severe fungal disease infestation A need for methyl bromide for research purposes
Strawberry Fruit	(a) California growers	Moderate to severe black root rot or crown rot Moderate to severe yellow or purple nutsedge infestation Moderate to severe nematodes Prohibition on use of 1,3-dichloropropene products because local township limits for this alternative have been reached Time to transition to an alternative A need for methyl bromide for research purposes
	(b) Florida growers	Moderate to severe yellow or purple nutsedge Moderate to severe nematodes Moderate to severe disease infestation Carolina geranium or cut-leaf evening primrose infestation Karst topography and to a lesser extent a need for methyl bromide for research purposes
	(c) Alabama, Arkansas, Georgia, Illinois, Kentucky, Louisiana, Maryland, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, and Virginia growers	Moderate to severe yellow or purple nutsedge Moderate to severe nematodes Moderate to severe black root and crown rot Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less A need for methyl bromide for research purposes
Tomatoes	(a) Michigan growers	Moderate to severe disease infestation Moderate to severe fungal pathogen infestation A need for methyl bromide for research purposes
	(b) Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, North Carolina, South Carolina, Tennessee, and Virginia growers	Moderate to severe yellow or purple nutsedge infestation Moderate to severe disease infestation Moderate to severe nematodes Presence of an occupied structure within 100 feet of a grower's field the size of 100 acres or less Karst topography A need for methyl bromide for research purposes
Turfgrass	(a) U.S. turfgrass sod nursery producers who are members of Turfgrass Producers International (TPI)	Production of industry certified pure sod Moderate to severe bermudagrass Moderate to severe nutsedge Moderate to severe white grub infestation Control of off-type perennial grass infestation A need for methyl bromide for research purposes
POST-HARVEST USES		

Food Processing	(a) Rice millers in all locations in the U.S. who are members of the USA Rice Millers Association.	Moderate to severe infestation of beetles, weevils, or moths Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(b) Pet food manufacturing facilities in the U.S. who are active members of the Pet Food Institute (For this proposed rule, "pet food" refers to domestic dog and cat food).	Moderate to severe infestation or beetles, moths, or cockroaches Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(c) Kraft Foods in the U.S.	Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(d) Members of the North American Millers' Association in the U.S.	Moderate to severe beetle infestation Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
	(e) Members of the National Pest Management Association associated with dry commodity structure fumigation (cocoa) and dry commodity fumigation (processed food, herbs and spices, dried milk and cheese processing facilities)	Moderate to severe beetle or moth infestation Older structures that can not be properly sealed to use an alternative to methyl bromide Presence of sensitive electronic equipment subject to corrosivity Time to transition to an alternative
Commodity Storage	(a) California entities storing walnuts, beans, dried plums, figs, raisins, dates (in Riverside county only), and pistachios in California	Rapid fumigation is required to meet a critical market window, such as during the holiday season, rapid fumigation is required when a buyer provides short (2 working days or less) notification for a purchase or there is a short period after harvest in which to fumigate and there is limited silo availability for using alternatives A need for methyl bromide for research purposes
Dry Cured Pork Products	(a) Members of the National Country Ham Association	Moderate to severe red legged ham beetle infestation Moderate to severe cheese/ham skipper infestation Moderate to severe dermested beetle infestation Ham mite infestation
	(b) Members of the American Association of Meat Processors	Moderate to severe red legged ham beetle infestation Moderate to severe cheese/ham skipper infestation Moderate to severe dermested beetle infestation Ham mite infestation
	(c) Nahunta Pork Center (North Carolina)	Moderate to severe red legged ham beetle infestation Moderate to severe cheese/ham skipper infestation Moderate to severe dermested beetle infestation Ham mite infestation